HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 44 OF 2007

–

Between:

M. Chelamayya & another

.....
Appellants

AND

The Deputy Chief Manager (Land and Estate),
Visakhapatnam Steel Plant,
Visakhapatnam

.....Respondent

:: J U D G M E N T ::

Counsel for the appellants : Shri K.V. Subrahmanya Narusu

Counsel for the respondent : Shri V. Ravinder Rao

Dated: 17.01.2007

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 29.12.2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellants against their threatened dispossession from land measuring 1540 square yards covered by F.S.Nos.185 and 54 (R.S.No.86) situated at Gajuwaka Village by observing that there are potentially disputed questions of fact which are required to be resolved by the Civil Court of competent jurisdiction in appropriate proceedings and no case is made out for grant of relief under Article 226 of the Constitution.

We have heard Shri K.V. Subrahmanya Narusu, learned counsel for the appellants, Shri V. Ravinder Rao, learned Standing Counsel for Visakhapatnam Steel Plant and perused the record.

In the affidavit filed by him in support of the writ petition, appellant No.2 – Mattapally Venkataramana Murthy gave the details of the lands purchased by his father late Mattapally Satyam, the patta granted by Deputy Tahsildar (Inams), Visakhapatnam vide his order dated 12-1-1979 and abortive action taken for acquisition of the land. For the sake of convenient reference, paragraphs 2 to 5 of his affidavit are reproduced below:

> "2. I submit, that, our father, late Mattapalli Satyam purchased an extent of 1540 sq. yds of vacant site, covered by F.S.Nos. 185 & 54 in Gajuwaka Village, which is an inam land from the Inamdar late Sri A.V. Bhanoji Rao, for the benefit of our joint family, in my name, under a registered

sale deed No. 2700, dt. 19.12.63. Accordingly, he purchased some other extents also from the Inamdar in the names of other members of our joint family. Since then, we have been in possession and enjoyment of the said extents of lands.

3. While so, we filed an application before, the, then, Special Deputy Tahsildar (Inams), Visakhapatnam, the competent authority, under the A.P. Inams Abolition Act, 1956, under Secs. 7 (1), r/w Rule 6 (4) (a) (ii) of the said Act, for granting pattas in our names. The Special Dy. Tahsildar (Inams), (S.Nos. 45/1, 66, 86, 87), dt. 12.1.79, granted pattas in our favour for the said extents as per the schedule annexed to the said order. I submit, that, subsequently, in the family partition among the members of our joint family, out of 1540 sq. yds, in respect of which patta was granted by the Deputy Tahsildar (Inams), Visakhapatnam, 3/4th of share was allotted to the 1st petitioner herein and the balance 1/4th extent of land was allotted to me. Since then, I and my brother, the 1st petitioner herein, have been in possession and enjoyment of the said land with out absolute rights. While so, acquisition for laying roads, leading from BHPV Junction to Gajuwaka – Balacheruvu Road for Visakhapatnam Steel Plant were initiated. However, the lands required for the formation of western bye-pass road from BHPV junction to Gajuwaka Balacheruvu road were withdrawn from the said proposal, at the request of the Visakhapatnam Steel Plant authorities. Accordingly, acquisition of lands for W.B. road had been dropped and the Special Dy. Collector, LA, Unit-IV, had been instructed by the Collector, to take action to withdraw the L.A. proceedings. Thereafter, on a proposal made by the requisition authorities i.e., Visakhapatnam Steel Plant authorities, an additional extent of 50 ft on either side of the proposed eastern bye-pass road was requested to be acquired by R & B department, for laying 150 ft road instead of 100 ft road as

originally proposed for formation of the said road from Gajuwaka to Balacheruvu road, for diverting the vehicular traffic. Accordingly, land acquisition proceedings have been initiated to acquire 25 ft on either side of 100' proposed road for the diverting vehicular traffic connecting Gajuwaka – Balacheruvu Road by the Special Deputy Collector, LA, Unit-IV, Visakhapatnam. I along with other residents of the area have represented to the Joint Collector, Visakhapatnam, to eliminate the houses (pucca, thatched houses) which are situated within the alignment of the additional area proposed to be acquired, to avoid hardship, to limit the width of the road to 100 ft as originally proposed and acquired. After considering the said representations, the Joint Collector, Visakhapatnam, by his proceedings Rc. 5130/82/5.0 (A), dt. 26.3.1983 instructed the Executive Engineer, R & B to restrict the width of eastern bye-pass road to 100 ft only and to complete the road accordingly. Thus, acquisition of the additional area was dropped and the Special Dy. Collector (LA), Unit II was instructed accordingly to withdraw the land acquisition proceedings of the additional area. Thus, the extent of 1540 sq. yds of which, we the petitioners herein are the absolute owners by virtue of the patta granted by the Special Deputy Tahsildar (Inams), Visakhapatnam was also eliminated as it lie in the alignment of the additional area proposed to be acquired for the purpose of laying eastern bye-pass road. I submit, that, we constructed shop rooms in a portion of the said land and enclosed the remaining vacant site with a compound wall in order to prevent the trespassers from illegally occupying the same.

4. While so, the staff of the respondent herein visited our aforesaid land, one week back and threatened to forcibly occupy the same on the ground, that, we have trespassed into the land belonging to Visakhapatnam Steel Plant, without

obtaining permission and threatened us to vacate the same. The said high-handed action of the respondent herein is being impugned in the present writ petition.

5. I submit, that, as already stated supra, by virtue of the patta granted by the Special Deputy Tahsildar (Inams) Visakhapatnam, the competent authority for granting pattas under the provisions of the A.P. Inams Abolition Act, 1956, in respect of the aforesaid land, which was purchased by our late father from the Inamdar. We are the absolute owners of the said land. Thus, we have been in possession and enjoyment of the said land by enclosing the same. I submit that, as already stated supra, the proposal for acquisition of the aforesaid land of an extent of 1540 sq. yds belonging to us, the petitioners herein, which was lying within the alignment of the additional area of 50 ft for laying eastern bye-pass road from Gajuwaka to Visakhapatnam Steel Plant road was withdrawn by the proceedings of Joint Collector, Visakhapatnam district. The staff of the respondent herein threatened to occupy the said land on the ground, that, it was required for the purpose of widening the eastern bye-pass road. I submit, that, the respondent again forcibly tried to dispossess us from our land, without acquiring the same for the purpose of widening the eastern bye-pass road by initiating proceedings either under the Land Acquisition Act or by mutual negotiations. The said action is not only high-handed, unauthorized, illegal but also unconstitutional. We cannot be deprived of our property, without resorting to due process of law as contemplated by Article 300 (A) of the Constitution of India."

The learned Single Judge did not issue notice to the respondent, but, on the basis of oral statement made by Shri V. Ravinder Rao, advocate for the respondent,

dismissed the writ petition by observing that disputed questions of fact cannot be decided by this Court under Article 226 of the Constitution of India.

In our opinion, in the absence of a counter-affidavit, the learned Single Judge did not have any occasion to go into the factual matrix of the case and record a finding that disputed questions of fact arise for an adjudication in the writ petition and such questions cannot be resolved by the High Court in exercise of its power under Article 226 of the Constitution.

Learned counsel for the respondent fairly submitted that the matter may be remanded to the learned Single Judge for fresh adjudication of the writ petition.

In the premise aforesaid, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition be listed before the Single Bench for fresh adjudication. With a view to obviate further delay, we direct the respondent to file counter affidavit within four weeks from today.

The writ petition be listed before the appropriate Single Bench on 26.02.2007.

In the meanwhile, the appellants may, if so advised, amend the description of respondent and implead the State of Andhra Pradesh as party respondent.

As a sequel to disposal of the appeal, W.A.M.P.No. 70 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

17.01.2007
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